


PRE-APPEAL BRIEF REQUEST FOR REVIEW (filed with the Notice of Appeal)		Docket Number 042933/373913
Application Number 10/518,930	Filed January 13, 2005	
First Named Inventor: Tommi Koistinen		
Art Unit 2446	Examiner Shaq Taha	
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p style="text-align: right;">Respectfully submitted,  Jonathan A. Thomas Registration No. 62,200</p> <p>Date <u>10/29/10</u></p> <p>Customer No. 00826 ALSTON & BIRD LLP Bank of America Plaza 101 South Tryon Street, Suite 4000 Charlotte, NC 28280-4000 Tel Charlotte Office (704) 444-1000 Fax Charlotte Office (704) 444-1111</p> <p><small>ELECTRONICALLY FILED USING THE EFS-WEB ELECTRONIC FILING SYSTEM OF THE UNITED STATES PATENT & TRADEMARK OFFICE ON October 29, 2010. LEGAL02/32248002v1</small></p>		

ATTACHMENT

Reasons for Requesting Pre-Appeal Brief Request for Review

These remarks are hereby filed concurrently with a Pre-Appeal Brief Request for Review and following a final Office Action dated July 29, 2010. The final Office Action rejects Claims 26-28, 30-37, 41, 42, and 44-56 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application Publication No. 2002-0194345 to Lu et al. (hereinafter "Lu") in view of U.S. Patent Application Publication No. 2003-0235194 to Morrison et al. (hereinafter "Morrison"). The Office Action has also rejected Claims 29 and 43 under 35 U.S.C. § 103(a) as being unpatentable over Lu in view of Morrison and in further view of U.S. Patent Application Publication No. 2002-0138618 to Szabo et al. (hereinafter "Szabo"). Based on the following remarks, reconsideration of the present application and allowance of the claims is respectfully requested.

Appellant notes that the Appeal Brief which was filed with the appropriate Notice of Appeal and Appeal Brief fees on December 9, 2009 prompted the Examiner to re-open prosecution without a review by the Board of Appeals such that it is believed that no fees are necessary in the filing of this Pre-Appeal Brief Request for Review or any Appeal Brief stemming from this Notice of Appeal.

Independent Claim 26 recites, *inter alia* "obtaining a current connection state as well as a current load state of each of a plurality of processors configured to perform communication in a packet switched environment[.]" Claim 26 further recites "informing the current connection state to respective processors comprising inserting data indicating the current connection state into a packet to be distributed."

The Office Action asserts beginning on Page 2 that Lu teaches "obtaining a current connection state as well as a load state of each of a plurality of processors" and cites FIG. 10D and FIG. 8 as teaching this feature. Appellant respectfully disagrees. FIG. 10D illustrates a "server state table" which displays metrics that include "current connections; current load; dynamic server weight; and a count" per paragraph [0117] of Lu. Lu does not teach or suggest that a "connection state" is obtained from each of a plurality of processors as required by Claim 26. The "current connections" of Lu are "the current number of connections the application switch has established with the server" as recited in paragraph [0117]. The number of connections is clearly not a "connection state" as would be apparent to one of ordinary skill in

the art. Therefore, Lu does not teach "obtaining a connection state...of each of a plurality of processors" as required by Claim 26. Neither Morrison nor Szabo are cited to correct this deficiency such that Claim 26 is patentably distinct from the cited references, taken alone or in combination.

Notwithstanding the above, the Office Action admits that Lu fails to teach that a connection state is inserted into a packet and cites Morrison to correct this deficiency stating that Morrison teaches that the control information may be affixed or inserted into the packet data by logic circuits that are external to the network processor per paragraph [0022] of Morrison. Notwithstanding that Lu does not teach or suggest obtaining a "connection state", Morrison does not teach inserting a "connection state" into a data packet as alleged by the Office Action.

Paragraph [0022] of Morrison recites that "the Packet Assignment Logic 10 obtains packet type information by checking control information affixed to the packet data. The control information may be affixed to or inserted into the packet data by logic circuits that are external to the network processor." The "control information" of Morrison is "control data bits" that are inserted into the packet data. Per paragraph [0027] of Morrison, "[t]he control data bits can indicate to which Processing Engine Bank the Receiver Unit must send the packet data." The provisional application from which Morrison claims priority, discloses on page 2 the "control data bits" of the non-provisional application:

The 2-bit value for each pkt type needs to be set as below :

- 00 - only bank 0
- 01 - only bank 1
- 1x - both banks

It is noted that the non-provisional application of Morrison is not prior art to the present application such that the Office Action must rely on the teachings of the provisional application for proper support of the disclosure of the non-provisional application. In view of the provisional, the "control information" as described in the non-provisional application is merely an identifier to dictate which processor bank to which the data packet is to be sent and does not relate to the connection in any manner, much less a "connection state." Conversely, the "connection information" is an identifier used by the packet assignment logic to route the data packet to the processor that is identified by the "connection information."

Further, as recited in Claim 26, the “current connection state” is obtained from each of a plurality of processors configured to perform communication in a packet switched connection. The “control information” of Morrison is not obtained from a plurality of processors, but rather assigned by a Flipper further differentiating the “control information” of Morrison from the “connection state” of the claims.

In view of the above, Appellant asserts that it would not have been obvious to one of ordinary skill in the art at the time of the invention was made to modify Lu by including the step of “informing the current connection state to respective processors comprising inserting data indicating the current connection state into a packet to be distributed.” Therefore, independent Claim 26 is patentably distinct from the cited references.

Independent Claims 41, 50, 51, 52, 53, and 54, each having their own scope, recite similar elements as addressed above with respect to Claim 26. Further, each of these claims was rejected summarily in the rejection of Claim 26 such that each of their respective rejections is traversed in view of the arguments presented above and each of Claims 26, 41, 50, 51, 52, 53, and 54 are in condition for allowance. A notice of allowance is respectfully requested in due course.

Because each of the dependent claims includes each of the recitations of a respective independent base claim, Applicants further submit that the dependent claims are patentably distinguishable from the cited references, taken alone or in combination, for at least those reasons discussed above. Accordingly, applicants respectfully submit that the rejections of the dependent claims are overcome and the dependent claims are in condition for allowance

Respectfully submitted,



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Date 10/29/10